UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRAGRANCENET.COM, INC., Plaintiff, -v- FRAGRANCEX.COM, INC. and JOHN DOES 1-20, Defendants.	**DECLARATION OF RON YAKUEL** CV 06 2225 (JFB) (AKT)

RON YAKUEL declares:

1. I am the President of defendant FragranceX.com, Inc. I make this declaration in opposition to FragranceNet.com's motion to compel certain discovery.

2. FragranceNet seeks, among other things, to discover the identities of FragranceX's drop-shippers and "affiliates." This information is among the most valuable and secret business information FragranceX has. Disclosure of this information for the ostensible purpose of allowing FragranceNet to see if it can find anyone who copied FragranceX's product pictures, which are alleged to be copies of FragranceNet's product pictures, could gravely and irreparably damage FragranceX's business. This disclosure should not be permitted.

3. FragranceX sells fragrances in two ways: direct to consumers through its website, FragranceX.com, and through drop-shippers. Drop-shippers are third parties of many different kinds who operate retail stores. They take orders from their customers and relay those orders to FragranceX. FragranceX then ships the product directly to the drop-shippers' customers.

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4. Drop-shippers are an important part of FragranceX's business. FragranceX goes to substantial trouble and expense to find drop-shippers because they are not readily identifiable from public sources. There is no directory of potential drop-ship customers. FragranceX finds them through various kinds of marketing and solicitation (I will not disclose our exact methods of locating and attracting drop-shippers, because FragranceX keeps that confidential as well).

5. Consequently, drop-shippers are a valuable and important part of our business, and keeping the identity of FragranceX's drop-shippers secret gives FragranceX a valuable business advantage over our competitors, including FragranceNet. It would greatly injure FragranceX's business and deprive FragranceX of a hard-earned business advantage to have to disclose who our drop-shippers are.

6. Similarly, I understand that FragranceNet is seeking to learn the entire finances of FragranceX, a non-public corporation, based on its claim for profits FragranceX allegedly made from products whose pictures FragranceX allegedly copied from FragranceNet.

7. The products related to this complaint represent only a portion of products sold at FragranceX.com. During the period when FragranceNet alleges its pictures were copied, which, according to its proposed Third Amended Complaint,[1] ended in February, 2006, we offered many thousands of products. For example, in March, 2005, we were offering for sale 8,986 products, and the number of products we offer has increased steadily since then.

8. FragranceNet alleges that we copied 900 of its product pictures. Although we have asked for production of all of our supposed copied pictures, to date,

[1] See Ex. A to Myers aff. sworn to May 4, 2007, ¶22.

FragranceNet has produced only 50. See Ex. B to proposed Third Amended Complaint, Myers aff. sworn to May 4, 2007, Ex. A. I cannot understand why FragranceX should be asked to disclose its entire non-public finances to a competitor's counsel based on a claim relating to a small number of its products and a period of time that ended more than a year ago. Under the guise of a legal complaint, FragranceNet is attempting to gain access to highly sensitive competitive information.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 3, 2007.

RON YAKUEL